



Signed and Filed: August 07, 2007


THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 06-30590 TEC 7
11 WILLIE E. PHILLIPS,) Chapter 7
12)
13 Debtor.)
14)
15 UNITED STATES TRUSTEE,) Adv. Proc. No. 06-3124 TC
16) (transferred from Bankr.
17 Plaintiff,) S.D. Cal.)
18 vs.)
19)
20 WILLIE E. PHILLIPS,)
21)
22 Defendant.)
23)

MEMORANDUM RE DEFENDANT'S MOTION FOR CONTINUANCE
OF TRIAL DATE AND FOR RECUSAL OF TRIAL JUDGE

This court held a hearing on August 3, 2007 re Defendant's motion for continuance of trial, and for recusal of the undersigned judge. Bruce P. Zelis appeared for Defendant. Minnie Loo appeared for Plaintiff.

Plaintiff did not object to Defendant's motion to continue,

1 and the court continued the trial to November 27, 2007, and
2 extended the discovery cutoff until October 29, 2007.

3 Defendant's motion to recuse asserts that a reasonable person
4 would question my impartiality because: (1) I enforced a decision
5 by the three judges of the Oakland division of this court that
6 Defendant should not be appointed as counsel for the debtor in
7 possession in any chapter 11 case; (2) I ruled against Defendant's
8 client in a recent case in which Defendant believes I should have
9 ruled in favor of his client; and (3) I will be called as a witness
10 in the present case because the complaint refers to the above-noted
11 decision by the three Oakland judges.

12 Defendant's motion does not state grounds for disqualification
13 under 28 U.S.C. § 455 for the following reasons.

14 Grounds (1) and (2) do not involve either knowledge obtained
15 from an extra-judicial source or evince favoritism or antagonism
16 that would make fair judgment impossible. The Supreme Court has
17 set forth the following text:

18 First, judicial rulings alone almost never constitute a
19 valid basis for a bias or partiality motion. . . .
20 Second, opinions formed by the judge on the basis of
21 facts introduced or events occurring in the course of the
22 current proceedings, *or of prior proceedings*, do not
23 constitute a basis for a bias or partiality motion unless
24 they display a deep-seated favoritism or antagonism that
25 would make fair judgment impossible.

26 Liteky v. United States, 510 U.S. 540, 555 (1994) (emphasis
27 added). With respect to knowledge obtained in prior
28 proceedings, the Court explained:

29 "Impartiality is not gullibility. Disinterestedness does
30 not mean child-like innocence. If the judge did not form
31 judgments of the actors in those court-house dramas
32 called trials, he could never render decisions." In re
33 J.P. Linahan, Inc., 138 F.2d 650, 654 (CA2 1943). Also
34 not subject to deprecatory characterization as "bias" or

1 "prejudice" are opinions held by judges as a result of
2 what they learned in earlier proceedings. It has long
3 been regarded as normal and proper for a judge to sit in
the same case upon its remand, and to sit in successive
trials involving the same defendant.

4 Id. at 451.

5 Nor does ground (3) establish a basis for recusal. I do not
6 have knowledge of disputed evidentiary facts concerning the
7 proceeding, such that I may be called as a witness. Although the
8 complaint does refer to the decision of the three Oakland judges,
9 my sole role was to enforce that decision against Mr. Phillips as I
10 would enforce an applicable prior ruling by any court of competent
11 jurisdiction.

12 ****END OF MEMORANDUM****

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